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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

July 14, 2008

CERTIFIED RETURN RECEIPT
7005 2570 0000 4801 7345

Darrell Boepple
Black Gold Organic Fertilizer
3802 47th Street
Lubbock, TX 79413

Subject: Proposed Assessment for Cessation Order Number MC-2008-25-01, Black Gold Organic Fertilizer, Rhea Rae Mine, S/019/0064, Grand County, Utah

Dear Mr. Boepple:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above notice of violation. The NOV was issued by Division Inspector Tom Munson, on June 12, 2008. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation. The proposed assessed penalty is **\$2,200.00**. The attached worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of the NOV has been considered in determining the facts surrounding the violation and the amount of this penalty. Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter.

The Informal Conference is distinct from the Assessment Conference regarding the proposed penalty. If you are requesting a review of the fact of violation as well as the proposed assessment, the assessment conference will be scheduled immediately following the review of the fact of the violation.

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S/019/0064
July 14, 2008

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and the penalty will be due and payable within thirty (30) days of the date of this proposed assessment, by (August 13, 2008). Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,



Lynn Kunzler
Assessment Officer

cc:

Enclosure: Proposed Assessment Worksheet
Task ID# 2459
Vicki Bailey, Accounting
Vickie Southwick, Exec. Sec.

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WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Black Gold Organic Fertilizer/Rhea Rae Mine PERMIT S/019/0064

NOV / CO # MC-2008-25-01

ASSESSMENT DATE July 14, 2008 ASSESSMENT OFFICER Lynn Kunzler

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
CO)		(1pt for NOV 5pts for
_____	_____	_____

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
Conducting mining operations without appropriate approvals
2. What is the probability of the occurrence of the event, which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

***** Improperly stored hazardous materials were observed by the inspector. Labels had been removed from containers thus preventing anyone from knowing what was actually being stored.**

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 13

PROVIDE AN EXPLANATION OF POINTS:

***** While no damage had occurred, the potential for damage is likely. Materials were not stored in a secured area and were visible from public highways. Labels had been removed from containers so anyone coming in contact with the material would not be able to properly inform medical emergency personnel as to what they had been exposed to. Assigned mid point in range.**

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 33

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE_____

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

***** Since operator had removed labels, he had to have been aware of the need to store these materials in a secure area. MSDS sheets have not been provided as requested by the inspector. Points assigned in mid range of Negligence.**

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)

- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

***** Violation has yet to be abated. Good Faith point were not assessed.**

V. ASSESSMENT SUMMARY (R647-7-103.3)

Notice of Violation Number MN-2008-41-01

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>33</u>
III.	TOTAL NEGLIGENCE POINTS	<u>7</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>40</u>
	TOTAL ASSESSED FINE	<u>\$2,200.00</u>